

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-10473PBS

CAPCO STEEL CORPORATION,

Plaintiff

v.

CLARK/HUBER, HUNT & NICHOLS/BERRY, a joint venture,
NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA,

FEDERAL INSURANCE COMPANY,

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,

ZURICH AMERICAN INSURANCE COMPANY,

UNITED STATES FIDELITY AND GUARANTY

INSURANCE COMPANY,

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,

Defendants

ANSWER OF THE DEFENDANTS
(JURY DEMANDED)

The Defendants hereby jointly answer the complaint of the Plaintiff.

FIRST AFFIRMATIVE DEFENSE

The Plaintiff's claimed are barred by the terms of its subcontract with the
Defendant Clark/Huber, Hunt & Nichols/Berry, a Joint Venture ("CHB").

SECOND AFFIRMATIVE DEFENSE

The Plaintiff has waived its claims against CHB.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff's complaint fails to state a claim for which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

As a further affirmative defense, the Defendants respond to the specific allegations to the Plaintiff's complaint as follows:

1. The Defendants are without knowledge or information sufficient to admit or deny the allegations of Paragraph 1.
2. The Defendants admit the allegations of Paragraph 2, except the Defendants deny that CHB is still located at 420 D Street in Boston, Massachusetts
3. The Defendants admit the allegations of Paragraph 3.
4. The Defendants admit the allegations of Paragraph 4.
5. The Defendants admit the allegations of Paragraph 5.
6. The Defendants admit the allegations of Paragraph 6.
7. The Defendants admit the allegations of Paragraph 7.
8. The Defendants admit the allegations of Paragraph 8.
9. The Defendants admit that Capco entered into a subcontract with CHB, dated January 22, 2003, admit that the terms of the subcontract speak for themselves, and deny any allegations of Paragraph 9 inconsistent therewith.
10. The Defendants admit the allegations of Paragraph 10.
11. The Defendants admit that CHB agreed to pay Capco in accordance with the terms of the subcontract between the parties, and deny any allegations of Paragraph 11 inconsistent therewith. More specifically, the Defendants deny that Capco is currently owed the sum of \$242,250 as alleged.

12. The Defendants admit that Capco has substantially performed its subcontract scope of work, and deny the remaining allegations of Paragraph 12.

13. The Defendants admit that Capco has made repeated demands for payment, but deny that CHB is currently obligated to make such payment, as CHB has not received said funds from the project owner.

14. The Defendants restate and incorporate herein by reference their responses to Paragraphs 1 through 13 hereof.

15. The Defendants the first sentence of Paragraph 15. The Defendants deny the second sentence of Paragraph 15, as no exhibit was attached to the copy of the complaint served on the Defendants.

16. The Defendants admit that the terms of the payment bond speak for themselves, and deny any allegations of Paragraph 16 inconsistent therewith.

17. The Defendants admit that the surety Defendants have not made payment to Capco for amounts claimed due by Capco. By way of further answer, the Defendants deny that any such amounts are currently due to Capco.

WHEREFORE, the Defendants demand that the complaint of the plaintiff be dismissed, and that the Defendants be awarded their costs and such other relief as this Court may be deemed appropriate.

JURY DEMAND

The Defendants hereby demand a trial by jury of all issues so triable.

Respectfully submitted,

CLARK/HUBER, HUNT & NICHOLS/BERRY,
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,
FEDERAL INSURANCE COMPANY,
FIDELITY AND DEPOSIT COMPANY OF
MARYLAND,
ZURICH AMERICAN INSURANCE COMPANY,
UNITED STATES FIDELITY AND GUARANTY
INSURANCE COMPANY,
ST. PAUL FIRE AND MARINE INSURANCE
COMPANY,
By their attorneys,

s/Stanley A. Martin

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